

ADM-11.15, "South Carolina Whistleblower Act," July 1, 2004

SCDC POLICY/PROCEDURE

NUMBER:ADM-11.15

TITLE:SOUTH CAROLINA WHISTLEBLOWER ACT

ISSUE DATE:JULY 1, 2004

RESPONSIBLE AUTHORITY:DIVISION OF HUMAN RESOURCES

OPERATIONS MANUAL:ADMINISTRATION

SUPERSEDES:ADM-11.15 (November 30, 1999); Change 1 (May 15, 2001)

RELEVANT SCDC FORMS/SUPPLIES: NONE

ACA/CAC STANDARDS:3-ACRS-1C-02, 3-4048

STATE/FEDERAL STATUTES: SOUTH CAROLINA WHISTLEBLOWER ACT (S.C. Code Ann. 8-27-10 - 8-27-50 [Supp. 2000])

THE LANGUAGE USED IN THIS POLICY/PROCEDURE DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS POLICY/PROCEDURE DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY/PROCEDURE, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

PURPOSE: To outline the intent of the South Carolina Whistleblower Act and to define the parameters by which employees are protected by the South Carolina Whistleblower Act when reporting allegations of misconduct and wrongdoing by a public official or employee.

POLICY STATEMENT: To promote the ethical, professional, and lawful conduct of all Agency employees, the SCDC will ensure that procedures are developed to comply with the South Carolina Whistleblower Act which will enable an employee to file a report of alleged misconduct and/or wrongdoing by either the Agency and/or an SCDC employee without fear of reprisal.

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### SPECIFIC PROCEDURES:

#### 1. FILING A REPORT:

a. In compliance with the South Carolina Whistleblower Act, an employee must file a report of waste, fraud, mismanagement, or other wrongdoing by the Agency and/or by an SCDC employee to an appropriate authority within 60 days of learning of the misconduct or wrongdoing. Such reports should be filed as quickly as possible. SCDC Policy/Procedure ADM-11.17, "Employee Conduct," and SCDC Policy/Procedure ADM-11.04, "Employee Corrective Action," require that incidents of sexual conduct, sexual abuse, or sexual harassment be reported immediately. (NOTE: Should an employee file a report with an appropriate authority employed by an organization or agency other than the SCDC, the other organization or agency head is required by law to inform the SCDC of his/her receipt of the report.) (3-ACRS-1C-02, 3-4048)

1.1 The appropriate authority in receipt of the report will be required to investigate the allegations of wrongdoing and misconduct. If, upon investigation, the appropriate authority determines that the employee's report (1) is unfounded; (2) amounts to a mere technical violation; and/or (3) was not filed in good faith, the Agency may take corrective action against the employee who filed the report, up to, and including, termination.

1.2 If the employee's report results in a savings of public money, 25% of the estimated net savings resulting from the first year of implementation of the employee's report, but not more than \$2,000, will be awarded to the employee by the Agency as determined by the Budget and Control Board. The amount awarded the employee will not supersede awards made under the State Employee Suggestion Program. However, because the SCDC participates in the State Employee Suggestion Program, the employee will be required to submit the items involving wrongdoing as a suggestion to the State Employee Suggestion Program. Employees will only be entitled to one (1) award to be issued either under the South Carolina Whistleblower Act or the State Employee Suggestion Program, at the employee's option.

2. RETALIATION AGAINST AN EMPLOYEE FOR FILING A REPORT: 2.1 Any employee who files a validated and/or substantiated report of wrongdoing with an appropriate authority will not be dismissed, suspended, or demoted nor incur a reduction in pay, unless the corrective action taken is unrelated to the report of the wrongdoing.

2.2 If an employee is dismissed, suspended from employment, or demoted, or if s/he receives a reduction in pay within one (1) year after having filed a timely report of wrongdoing, except as required under employee

corrective action, the employee may institute a non-jury civil action against the Agency for any one (1) or all of the following:

- reinstatement to his/her former position;
- lost wages;
- actual damages not to exceed \$15,000; and/or
- reasonable attorney fees as determined by the Court.

2.3 No civil action can be brought by an employee who alleges retaliation unless:

- the employee has exhausted all available grievance or other administrative remedies;
- any previous proceedings resulted in a finding that the employee would not have been disciplined except for his/her reporting the alleged wrongdoing.

2.4 A civil action brought under this procedure must be commenced within one (1) year after the accrual of the cause of action or exhaustion of all available grievance or other administrative and judicial remedies, or such action will be forever barred.

### 3. DEFINITIONS:

Appropriate Authority, as defined by state law, refers to the "agency that employs the person making the report; or a federal, state, or local governmental body, agency, or organization having jurisdiction over criminal law enforcement" (e.g., South Carolina Law Enforcement Division, etc.), "regulatory violations" (e.g., Environmental Protection Agency, etc.), "or professional conduct or wrongdoing" (e.g., State Ethics Commission, etc.). Should an employee report an allegation of wrongdoing or misconduct to an entity other than his/her employing agency, the employing agency must be notified by the other entity that received the report.

Report refers to a written document alleging waste or wrongdoing containing, at a minimum, the following information: (1) date of disclosure, (2) name of the employee making the report, (3) nature of the wrongdoing, and (4) date or range of dates during which the wrongdoing allegedly occurred.

Wrongdoing refers to an action that results in substantial abuse, misuse, destruction, or loss of substantial public funds or resources or an allegation that an SCDC employee intentionally violated federal or state law or a code of ethics which is not merely technical or of a minimal nature.

SIGNATURE ON FILE

—

s/Jon E. Ozmint, Director

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